

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEVON RAY HOCKEMIER,

Case No. 3:22-cv-00386-LRH-CLB

Petitioner,

v.

**APPOINTMENT AND
SCHEDULING ORDER**

TIM GARRET, *et al.*,

Respondents.

On November 15, 2022, this Court granted Petitioner Devon Hockemier's motion for appointment of counsel, provisionally appointed the Federal Public Defender to represent Petitioner, and gave the Federal Public Defender 30 days to (1) undertake direct representation of Petitioner by filing a notice of appearance or (2) indicate the office's inability to represent Petitioner in these proceedings. (ECF No. 7.) On December 12, 2022, the Federal Public Defender timely filed notices of appearance. (ECF Nos. 11, 12.)

IT IS THEREFORE ORDERED that the Federal Public Defender—through Shelly Richter, Esq. and Jonathan Kirshbaum, Esq.—is appointed as counsel for Petitioner Devon Hockemier pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Petitioner in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

IT IS FURTHER ORDERED that Petitioner shall have up to and including 90 days from entry of this order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Petitioner remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting any extension thereof, the Court makes no finding or representation that the petition, any amendments thereto, and/or any claims contained therein are not subject to dismissal as

1 untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

2 **IT IS FURTHER ORDERED** that Respondents shall file a response to the amended
3 petition, including potentially by motion to dismiss, within 60 days of service of an amended
4 petition and that Petitioner may file a reply thereto within 30 days of service of the answer. The
5 response and reply time to any motion filed by either party, including a motion filed in lieu of a
6 pleading, shall be governed instead by Local Rule LR 7-2(b).

7 **IT IS FURTHER ORDERED** that any procedural defenses raised by Respondents to the
8 counseled amended petition shall be raised together in a single consolidated motion to dismiss. In
9 other words, the Court does not wish to address any procedural defenses raised herein either in
10 seriatum fashion in multiple successive motions to dismiss or embedded in the answer. Procedural
11 defenses omitted from such motion to dismiss will be subject to potential waiver. Respondents
12 shall not file a response in this case that consolidates their procedural defenses, if any, with their
13 response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims
14 clearly lacking merit. If Respondents do seek dismissal of unexhausted claims under § 2254(b)(2):
15 (a) they shall do so within the single motion to dismiss not in the answer; and (b) they shall
16 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
17 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
18 including exhaustion, shall be included with the merits in an answer. All procedural defenses,
19 including exhaustion, instead must be raised by motion to dismiss.

20 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, Respondents shall
21 specifically cite to and address the applicable state court written decision and state court record
22 materials, if any, regarding each claim within the response as to that claim.

23 **IT IS FURTHER ORDERED** that any state court record and related exhibits filed herein
24 by either Petitioner or Respondents shall be filed with a separate index of exhibits identifying the
25 exhibits by number. The CM/ECF attachments that are filed further shall be identified by the
26 number or numbers of the exhibits in the attachment. If the exhibits filed will span more than one
27 ECF Number in the record, the first document under each successive ECF Number shall be either
28 another copy of the index, a volume cover page, or some other document serving as a filler, so that

1 each exhibit under the ECF Number thereafter will be listed under an attachment number (i.e.,
2 Attachment 1, 2, etc.).

3 **IT IS FURTHER ORDERED** that the hard copy of any exhibits filed by either counsel
4 shall be delivered—for this case—to the Reno Clerk’s Office. Courtesy copies of exhibits shall not
5 be provided.

6 DATED this 14th day of December 2022.

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9 LARRY R. HICKS
10 UNITED STATES DISTRICT JUDGE
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